(1997) 04 BOM CK 0038

In the Bombay High Court

Case No : Revision Petition No. 755 of 1996

L.I.C. of India — APPELLANT

Vs

Ramesh Chandra — RESPONDENT

Date of Decision : 11-04-1997

Acts Referred:
Insurance Act, 1938 — Section 2(11)

Citation : (1998) 3 BomCR 439

Hon'ble Judges : S.S. Chadha, Member

Bench : Single Bench

Advocate : S.K. Taneja, for the Appellant;

Judgement

S.S. Chadha, Member

1. This Revision petition has arisen out of the order dated 22-7-96 passed by the Madhya Pradesh State Commission at Bhopal dismissing the appeal and upholding the order dated 29-11-95 of the District Forum- Dewas allowing the complaint and directing the Life Insurance Corporation of India- Opposite party, (for short called L.I.C.) to pay Rs. 50,000/- in (sic to) the complainant within two months from 29-11-95 and also pay Rs. 150/- as costs of the case.

2. The facts are not in dispute and may be briefly noticed. The complainant had taken a life insurance Policy No. 34180460 commencing from 27th March, 1993, for Rs. 50,000/- under 15 years money back policy with profit (with accident benefit). Under the terms of the policy, the sum assured together with accrued bonus was payable on death before the stipulated date of maturity and in case of survival, 25% of the sum assured was payable after 5 years, another 25% after 10 years and the remaining 50% of the sum assured with accrued bonus on the stipulated date of maturity. Besides, the life assured was entitled to accidental benefits/disability benefits on account of accident vide Clause 10 of the policy. The complainant met with an accident on 25th April, 1994, resulting into injuries in his right hand, left leg below knee, nose and back of his head. Ultimately the

complainant''s right hand was imputed. The complainant claimed that he was entitled to receive the sum assured i.e. Rs. 50,000/- from the Opposite Party due to amputation of his right hand. The opposite party opined that on the basis of the averments made in the claim that no case was made out for accident/ disability benefit under the terms of policy bond and did not entertain the claim. Alleging deficiency in service, the complainant filed the complaint before the District Forum, Dewas.

3. The District Forum in the order dated 29th of November, 1995 held that it was fully proved that the complainant had assured himself with the Corporation for a sum assured of Rs. 50,000/- for accidental insurance, that the complainant met with rail accident on 25-4-94 and as a result of injuries received in the aforesaid accident the complainant''s right hand was imputed, that the complainant''s wife intimated to the opposite party about the aforesaid rail accident and the fact of amputation and that claim was made and reminders sent by the complainant from time to time to the opposite party for obtaining insurance claim amount but not settled. The District Forum after examining the affidavits and the fact that the complainant''s hand was imputed as a result of the said accident, admitted the complaint and ordered the opposite party to pay Rs. 50,000/- to the complainant within 2 months from 29-11-95 and also Rs. 150 as costs. The State Commission in appeal by the L.I.C. upheld the finding of the District Forum that the disability of the complainant was total and permanent on account of the accident resulting in cutting of his hand and the claim is covered by Clause 10(a) of the insurance policy. The State Commission dismissed the appeal and upheld the order of the District Forum.

4. We have heard Shri S.K. Taneja, Advocate for the petitioner herein and with his help have gone through the records as the respondent did not appear either in person or through any Authorised Representative. A contract of life assurance is a contract to pay a sum of money on the death of the assured or on the happening of the events included in the insurance cover in consideration of due payment of certain annuity during the life time of the assured. The life insurance business is defined in section 2(11) of the Insurance Act, 1938 reading as follows :

"life insurance business" means the business of effecting contracts of insurance upon human life, including any contract whereby the payment of money is assured on death (except death by accident only) or the happening of any contingency dependent on human life, and any contract which is subject to payment of premiums for a term dependent on human life and shall be deemed to include :

(a) the granting of disability and double or triple indemnity accident benefits, if so provided in the contract of insurance,

(b) the granting of annuities upon human life; and

(c) the granting of superannuation allowances and annuities payable out of any fund applicable solely to the relief and maintenance of persons engaged or who have been engaged in any particular profession, trade or employment or of the dependants of such persons;"

5. A contract of life assurance is a contract to pay a sum of money on the death of assured in consideration of premium. Life Insurance business covers not only the contracts of insurance upon the human life but also on the happening of any contingency dependent on human life by the deeming inclusion clause for the grant of disability and double or triple benefit and accident benefit, if so provided in the contract of insurance. The provisions in the contract of insurance is the determining factor of the contract of indemnity and the incidence of payment of the amount under the policy bond. Insurance often does not necessarily give perfect indemnity. A contract of insurance is like any other contract whereby one person, called the insurer undertakes, in return for the agreed consideration, called the premium, to pay to another person, called the assured, sum of money or its equivalent, on the happening of a specified event. An essential element of the contract of insurance is that the agreement provides that the insurer undertakes to indemnify the insured on the happening of a specified event. Life Insurance business now includes miscellaneous insurance. A claim will arise in life insurance only in the event of death or on attaining a specified age, but if the policy is coupled with miscellaneous insurance, the life assured will be entitled to accidental benefit/disability benefit as in this case. In addition to the sum assured under the policy together with accrued bonus payable on death, the life assured was entitled to accidental benefit/disability benefit on account of accident vide Clause 10 of the policy bond reading as follows :

"Accident Benefits : If at any time when this policy is in force for the full sum assured, the Life Assured, before the expiry of the period for which the premium is payable or before the policy anniversary on which the age nearer birthday of Life Assured is 70 whichever is earlier, is involved in an accident resulting in either permanent disability as herein after defined or death and the same is proved to the satisfaction of the Corporation, the Corporation agrees in the case of

(a) Disability to the Assured : (i) to pay in monthly installments spread over 10 years and additional sum equal to the sum assured under this Policy. If the policy becomes a claim before the expiry of the said period of 10 years, the disability benefit installment which have not fallen due will be paid along with the claim, (ii) to waive the payments of future premiums.

The maximum aggregate limit of assurance under all policies on the same life to which benefits (i) and (ii) above apply shall not in any event exceed Rs. 5,00,000/-. If there be more policies than one and of the total assurance exceeds Rs. 5,00,000/- the benefits shall apply to the first Rs. 5,00,000/- sum assured in order of date of the policies issued.

The waiver of premiums shall extinguish all options under this policy and also the benefits covered by para (b) of the clause except as to such assurance, if any, as exceeds the maximum aggregate limit of Rs. 5,00,000/- and which have been kept in force by continued payment premiums.

The Disability above referred to must be disability which is the result of an accident and must be total and permanent and such that there is neither then nor at any time thereafter any work occupation or profession that the Life Assured can ever sufficiently do or follow to earn or obtain any wages, compensation or profit. Accidental injuries which independently of all other causes and within 120 days from the happening of such accident result in the irrecoverable loss of the entire sight of both eyes or in the amputation of both hands at or above the wrists or in the amputation of feet at or above ankles, or in the amputation of one hand at or above the wrist and one foot at or above the ankle shall also be deemed to constitute such disability."

6. The question is whether the amputation of right hand suffered by the complainant is a specified event and constitute disability entitled to an accident benefit under Clause 10(a) of the policy bond. The accident benefit is available to the assured only if he is involved in an accident resulting in total and permanent disability as defined in Clause 10. The disability referred in the said clause must be disability which is the result of accident and must be total and permanent. The accidental injuries which independently of all other causes and within 120 days from happening of such accident result in the irrecoverable loss of the entire sight of both eyes or in the amputation of both hands at or above the wrists or in the amputation of feet at or above ankles, or in the amputation of one hand at or above the wrist and one foot at or above the wrist ankles only constitute such disability. The case of the complainant is not of the amputation of both hands at or above the wrists or in the amputation of feet at or above ankles. The case of the complainant is the amputation of one hand at or above the wrist but that is not independently deemed to be a disability as is covered since the coverage in the clause is only in cases of amputation of one hand at or above the wrist and one foot at or above ankle. It bears repetition that the deeming clause constituting the disability will get attracted only if there was the amputation of one hand at or above the wrist and one foot at or above the ankle. If it is the amputation of one hand at or above wrist or the amputation of one foot at or above the ankle, then it does not by the fiction of the Clause 10(a) constitute disability. The construction of the policy bond which is the basis of the contract of insurance, is a question of law and its true and correct interpretation would give jurisdiction to the Fora to pronounce upon the deficiency in service, if any. The District Forum as well as the State Commission had no jurisdiction to go beyond the terms and conditions of the policy bond and could only order the payment of the disability benefit if it was specified event covered under Clause 10 of the conditions of policy. The amputation of only one hand does not fall within the deeming definition constituting disability in terms of Clause 10(a) of the policy bond and thus the impugned orders suffer from serious illegalities.

7. The impugned orders of the District Forum and the State Commission are hereby set aside and the complaint is dismissed leaving the parties to bear their own costs throughout.